

Serial No. 10/810,747

PATENT
Docket No. 93690-010100/03-0598**REMARKS**

The office action issued by the Examiner and the citations referred to in the office action have been carefully considered. Claims 1-3, 6, 9, 12, 18-21 have been amended. Support for the amendments can be found at least in paragraph [0039]. Claims 7, 20, and 22-23 have been canceled without prejudice or disclaimer. New claims 24 and 25 have been added. Support for amendments and new claims can be found in the specification, particularly in paragraph [0030]. Consequently, claims 1-6, 8-13, 18-19, 21 and 24-25 are pending.

Specification

The Examiner has objected to the specification as using a abbreviation without identifying the actual substance. Paragraph [0011] of the specification has been amended to include language identifying the actual substance as ethyl vinyl acetate.

Drawings and Claim Rejections under 35 USC § 112

The Examiner has objected to the drawings under 37 CFR 1.83(a) as not showing every feature of the invention specified in the claims. The Examiner has rejected claim 23 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Claim 23 has been canceled.

Claim Objections

The Examiner has objected to claims 6, 18, and 22 for informalities in the claim language. The claims have been amended to correct the antecedent bases in the claim language.

Claim Rejections under 35 USC § 102 and 35 U.S.C. § 103

The Examiner has rejected Claims 1-4, 6, 8-10 and 13 under 35 U.S.C. § 102(b) as being anticipated by Malin et al. (U.S. 5,638,586). However, Malin et al. does not teach all of the elements of the amended claims. The Federal Circuit states that "all elements of the claimed

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invention must be disclosed in a single reference for anticipation to exist.” Atlas Powder Co. v. E. I. DuPont de Nemours & Co., 750 F.2d 1569, 224 USPQ 409 (Fed. Cir. 1984). Furthermore, missing elements cannot be supplied by the knowledge of one skilled in the art or the disclosure of another reference in order to give rise to an anticipation rejection. Structural Rubber Products Co. v. Park Rubber Co., 749 F.2d 707, 223 USPQ 1264 (Fed. Cir. 1984).

Claim 1 has been amended to include the limitation of “wherein the first sealant layer and second sealant layer have a generally teardrop shape to define an open air gap between the first profile member and a first layer of web material and second profile member and a second layer of web material” from claim 7. Nowhere in Malin is there a disclosure, teaching or suggestion of teardrop shape sealant layer defining an open air gap. In the absence of teaching or suggestion as presently claimed in the Malin reference, anticipation of the claims is negated.

The Examiner has rejected Claims 18, 19, and 21 under 35 U.S.C. § 102(b) as being anticipated by Tomic et al. (U.S. 5,565,273). However, Tomic does not teach all of the elements of the amended claims. Similar to claim 1 has been amended to include the limitation of “wherein the first sealant layer and second sealant layer have a generally teardrop shape to define an open air gap between the first profile member and a first layer of web material and second profile member and a second layer of web material” from claim 7. Nowhere in Tomic is there a disclosure, teaching or suggestion of teardrop shape sealant layer defining an open air gap. In the absence of teaching or suggestion as presently claimed in the Tomic reference, anticipation of the claims is negated.

The Examiner has rejected Claims 18 and 21 under 35 U.S.C. § 102(b) as being anticipated by Matthews. (U.S. 6,154,934). However, Matthews does not teach all of the elements of the amended claims. Similar to claim 1, claim 18 has been amended to include the limitation of “wherein the first sealant layer and second sealant layer have a generally teardrop shape to define an open air gap between the first profile member and a first layer of web material and second profile member and a second layer of web material” from claim 7. Nowhere in Matthews is there a disclosure, teaching or suggestion of teardrop shape sealant layer defining an

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open air gap. In the absence of teaching or suggestion as presently claimed in the Matthews reference, anticipation of the claims is negated.

The Examiner has rejected claim 7 as being unpatentable under 35 U.S.C. 103 over Malin in view of Kettner. The Examiner has also rejected claim 20 under Tomic in view of Kettner. To establish *prima facie* obviousness of a claimed invention, three requirements need to be present. First, all the claim limitations must be taught or suggested by the prior art. *CFMT, Inc. v. Yieldup Int'l Corp.*, 349 F.3d 1333, 1337 (Fed. Cir. 2003), See also MPRP 2143.03. Second, there must be some suggestion or motivation to combine the teachings, either in the references or in the ordinary skill. Third, an expectation of success must be present.

With reference to the above arguments, independent claims 1 and 18 include the limitation "wherein the first sealant layer and second sealant layer have a generally teardrop shape to define an open air gap between the first profile member and a first layer of web material and second profile member and a second layer of web material." The Kettner reference does not disclose an open air gap between the profile member and the web material. All of the claim limitations cannot be found in the prior art.

Therefore, independent claims 1 and 18 are allowable. Accordingly, dependent 2-4, 6, 8-10, 13, 19, and 21 should also be allowable. We therefore submit that the present invention as claimed is patentable over the cited art. Allowance is requested. Thus the Applicants respectfully request that the Examiner withdraw the 35 U.S.C. 102 (b) rejections to claims 1-4, 6, 8-10, 13, 18-19, and 21.

Additionally, the Examiner has rejected claims 5, 11, and 12 as being unpatentable under 35 U.S.C. 103 over various references. However, independent claims 1 and 18 are allowable and, therefore, dependent claims 5, 11, and 12 should also be allowable. Thus the applicant respectfully request that the Examiner withdraw the 35 U.S.C. 103 (a) rejections to claims 1-13, 18-19, and 21.

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Conclusion

It is respectfully submitted that all of the Examiner's objections have been successfully traversed and that the application is now in order for allowance. Accordingly, reconsideration of the application and allowance thereof is courteously solicited.

The Director is authorized to charge any additional fee(s) or any underpayment of fee(s), or to credit any overpayments to **Deposit Account Number 50-2638**. Please ensure that Attorney Docket Number 93690-010100/03-0598 is referred to when charging any payments or credits for this case.

Respectfully submitted,

Date: June 13, 2006


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LA-FS1401163v01